



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/148894

PRELIMINARY RECITALS

Pursuant to a petition filed April 23, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the PACU - 5173 in regard to FoodShare benefits (FS), a hearing was held on July 25, 2013, at Milwaukee, Wisconsin. The hearing continued on August 23, 2012. The record was held open at the end of the hearing for submission of additional documentation by the agency and a response to that documentation from the Petitioner and the agency. The record closed on September 16, 2013.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$6,163 for the period of May 1, 2011 – December 31, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Megan Ryan
PACU – 5173
P.O. Box 8939
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County who received FS and BC+ benefits during the time period of May, 2011 to December, 2012.

2. On January 17, 2011, the agency issued a Notice of Decision informing the Petitioner that her application for BC+ benefits dated December 15, 2010 was denied for failure to supply requested verifications. See Department Exhibit #12F.
3. On March 24, 2011, the Petitioner submitted an application for BC+ benefits. In the application, she reported herself, HG (father of one of Petitioner's children and her unborn child), and two minor children as household members. She reported employment information for herself and HG. See Department Exhibit #12E.
4. On March 30, 2011, the agency issued a Notice of Proof requesting verification of information from the Petitioner.
5. On April 6, 2011, the Petitioner submitted another application for BC+ benefits to the agency as well as additional documentation in response to the request for verification. In the application, she listed herself and two minor children as household members. In addition, she listed HG as the "absent parent" of one child and her unborn child. See Department Exhibit #12B. The additional documentation submitted included a statement from the Petitioner indicating that she and HG are raising a family together and she was unsure if he should be included in her household. Also attached were pay statements for HG, a utility bill addressed to HG and Petitioner at [REDACTED], WI [REDACTED] from February, 2011, Social Security cards for Petitioner, HG and two minor children, birth certificates for Petitioner, HG and the two minor children, 2010 property tax statement addressed to HG and Petitioner at [REDACTED], WI [REDACTED], a child support summary for Petitioner's child (not HG's child), and insurance information for HG, including a statement that HG had insurance for his minor child through his employer. See Department Exhibit #5.
6. On May 5, 2011, the Petitioner submitted an application for FS benefits and family planning services. She reported herself and two minor children in the household. She reported HG as the "absent parent" of one child and her unborn child. She reported his date of absence as April 26, 2011. See Department Exhibit #12C.
7. On May 20, 2011, the agency issued a Notice of Decision informing the Petitioner that she was approved for BC+ and FS effective May 1, 2011 based on a household size of three, including Petitioner and her two minor children.
8. On January 28, 2013, the agency received an online complaint from HG stating he and Petitioner have resided together from 2005 through December 3, 2012.
9. The agency issued undated letters to the Petitioner and HG informing them that the agency received information that HG resided with the Petitioner from at least 2011 until he moved out in December, 2012. The letter states that the agency investigated this and determined that HG did, in fact, reside with the Petitioner and she failed to accurately report HG's residence to the agency. A FS overpayment of \$6,163 was calculated and a BC+ overpayment of \$17,904.85 was calculated for the period of May 1, 2011 – December 31, 2012. The letter informed the Petitioner and HG that they would receive additional information in the mail including a repayment agreement. See Department Exhibit #18.
10. On March 28, 2013, the agency issued a letter to the Petitioner informing her that the agency received information that HG resided with her from December 2005 through December 2012. It noted that she did not report his residence and the agency would look back to determine what income should have been used. It offered the Petitioner an opportunity to provide copies of all paystubs for herself and HG for all jobs since January 1, 2005. See Petitioner Exhibit #56.

11. On April 15, 2013, the agency issued Notifications of FS Overissuance to the Petitioner informing her that the agency seeks to recover a total of \$6,163 for the period of May 1, 2011 – December 31, 2012. See Department Exhibits #31 – 34.
13. On May 1, 2013, an appeal was filed with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

The agency alleges that the Petitioner resided with HG from 2005 – December, 2012 but she did not report to the agency that she and HG resided together in 2011 when she applied for benefits. Therefore, the agency did not include HG’s income in determining the eligibility of Petitioner’s household for FS and BC+ benefits when the Petitioner applied for benefits in April and May, 2011. The agency asserts that HG’s income put the household over the income limit and the household was not eligible for FS and BC+ benefits.

In support of its assertion that Petitioner and HG resided together the agency noted that the Petitioner included HG as a household member in the BC+ application dated March 24, 2011 (see Department Exhibit #12E) but reported him as an “absent parent” in the BC+ application dated April 6, 2011 (see Department Exhibit #12B). She also reported HG as an absent parent in the May 5, 2011 application for FS.

On the April 6, 2011 application, the Petitioner did report HG as an “absent parent” in the application (see Department Exhibit #12B). However, in a written statement she submitted that same day, she indicates that she and HG are “raising a family together” but she wasn’t “100% sure if needed to be included as a person in the household because we are not related.” She included his information “if needed just in case.” The information she submitted included HG’s pay statements, his SS card and number, his health insurance information, a utility bill from February, 2013 addressed to HG and Petitioner and a property tax bill address to HG and Petitioner. Petitioner informed the agency that HG’s insurance covered their daughter. See Department Exhibit #5. Petitioner was clearly uncertain about whether to include HG in the household and provided HG’s information to the agency in the event that the agency determined he should be included. She also provided information about her daughter’s health insurance from HG’s employer. There is no evidence that the agency followed up with the Petitioner or HG at the time to determine his residence or whether coverage was required for the child. The Petitioner’s written statement submitted on April 6, 2011 with her application should have prompted the agency to verify HG’s residence at that point.

At the hearing, the Petitioner testified that HG was living with her on April 6, 2011 when she submitted the BC+ application but the relationship was poor at that time and he was in the process of moving out. The Petitioner has consistently reported that HG moved out of the home at [REDACTED] on April 26, 2011. The Petitioner’s testimony at the hearing is consistent with what was reported in her FS application of May 5, 2011 where she reported HG as an “absent parent” effective April 26, 2011. Her testimony is also consistent with the applications on March 24 and April 6 when she initially reported

his residence with her and then submitted a statement indicating her uncertainty about whether to include him in the household. The agency erred in failing to verify HG's residence at the time of application on April 6, 2011 given the Petitioner's statement indicating her uncertainty of whether HG should be included in the household.

The agency also argued that HG continued to live with the Petitioner through December, 2012. The agency relies on various documents in addition to the Petitioner's applications (as noted above) to support its contention that HG and the Petitioner lived together from May 1, 2011 – December, 2012. These documents include Wisconsin Circuit Court Access Program (CCAP) printouts from various court proceedings involving HG and the Petitioner, child support documents, credit reports, voter registration information for HG, and a criminal complaint for HG. The source of address information on all of these documents is unknown and not reliable. The agency argues that the addresses in these documents were "reported" by the Petitioner and HG. There is no evidence to affirm this. The CCAP documents submitted by the agency show different addresses for HG during the relevant time period. The credit reports and child support documents submitted by the agency contain address information that is either contradictory or inaccurate, making them unreliable as evidence. For example, the credit report for the Petitioner indicates her address as of February, 2013 at [REDACTED]. It is undisputed that she has not resided there since December 3, 2012. No individual from the child support agency appeared to testify and explain the inconsistent information in its documents. The criminal complaint for a domestic abuse incident refers to "their residence" at [REDACTED]. It is undisputed that the Petitioner and HG jointly owned the property at the time of this incident so it is not clear what the officer meant and no police officer testified to explain the statement. The voter registration document indicates that HG registered in 2008 and provided [REDACTED] as his address but this is not evidence of his residence from May, 2011 – December, 2012. See Department Exhibits #2, 3, 8, 9, 10 and 23.

The unreliability of the agency's investigation and evidence is further demonstrated by the fact that the Petitioner produced CCAP records, municipal court citations, DMV records, police records, a no contact order dated June 5, 2012, bank statements and child support records that show HG's address was 2232 W. Carrington Ave., [REDACTED] (his mother's home) during the relevant time period. See Petitioner Exhibits #9, 13, 14, 15, 18, 19, 20, 23, 30 and 31.

The agency also relied on the testimony of HG who testified at the hearing that he and the Petitioner lived together from 2005 – December 3, 2012. HG has made numerous statements and reports about his address from April, 2011 – December, 2012. There is absolutely no consistency in his statements and the statements completely and entirely contradict each other. Further, HG testified that he made his complaint to the agency alleging Petitioner misrepresented his residence on January 28, 2013 when he was angry with the Petitioner because of child support and child custody matters. He was not aware at the time that his complaint would be against his self-interest. None of HG's statements or testimony can be considered as reliable evidence based on his complete lack of credibility. See Department Exhibits #1 and 11.

The Petitioner in this case argued that the agency's investigation was unreliable for numerous reasons. The Petitioner contended that the agency conducted most of its investigation after it had already concluded that she owed the agency for overissued FS and BC+ benefits. In support of her argument, she noted a letter she received from the agency dated March 28, 2013 in which the agency stated: "We have received information that between December 2005 and December of 2012, [HG] lived in your home. This was information was investigated and we confirmed the allegations." The letter went on to indicate that the agency would be processing an overpayment for FS and BC+ benefits. The agency's own investigation summary confirms that the agency received a referral from Waukesha County on March 22, 2013 which included HG's complaint and written statement, some CCAP records, credit reports, child support history and wage history. According to the agency's summary, the case was referred that day for overpayment processing. Subsequently, the agency obtained HG's voter registration, contacted

Wisconsin Energies (WE), obtained a criminal complaint, contacted HG's employer and interviewed HG's mother. According to the agency's information, the first contact made with the Petitioner was the letter of March 28, 2013 informing her that the agency had concluded its investigation. There was also information that the agency tried to contact her by phone on April 8, 2013.

Given the lack of reliable information supplied to the agency on March 22, 2013 when the referral was made, it is reasonable to expect that the agency would attempt to conduct a more thorough investigation and verify information. Instead, it appears that the agency based its conclusion on the evidence it had on March 22, 2013 and then gathered information to support its conclusion. This casts doubt on the reliability of the investigation. In addition, the agency appears to have ignored or discounted without explanation any evidence that did not support its conclusion. The evidence produced by the Petitioner was evidence which the agency could also have easily gathered. Specifically, the Petitioner produced CCAP records that show HG actually reporting a new address to the court, a no contact order entered against HG on June 5, 2012 prohibiting him from having any contact with the Petitioner, a police report indicating that HG reported he did not live at the [REDACTED] address, and other public records readily available to the agency. A good investigation does not ignore or discount such "exculpatory" evidence.

I note also that the agency's investigative summary indicates the agency contacted HG's employer in April, 2013 and asked for address information for him but any information the agency obtained was not provided at the hearing. In addition, the agency's investigative summary notes that the agency interviewed HG's mother on May 8, 2013. No information about this interview was provided to the Petitioner when she requested it and no evidence of the interview was provided at the hearing. After the hearing but while the record was still open, I requested that the agency provide any documentation of this interview. The agency responded that no documentation of the interview existed. However, on September 4, 2013, the investigator provided a written summary of the interview based on her memory of it. I have given this information no weight as it is not reliable. The investigator stated she had no notes or other documentation of the interview and based the statement only on her memory four months later.

Also troubling is the agency's lack of proper response to the Petitioner's numerous requests for information about the investigation. The Petitioner is entitled to the information upon which the agency is relying to recover benefits. She is entitled to conduct discovery and is entitled to make open records requests. She is further entitled to have proper responses to those requests from the agency. The agency failed to properly respond to the Petitioner and failed to provide information that she was entitled to receive.

The agency has failed to meet its burden of demonstrating that the Petitioner was overissued FS benefits in the amount of \$6,163 for the period of May, 2011 – December, 2012. Its evidence is not reliable and was rebutted by the Petitioner. The investigation lacked thoroughness and proper analysis of the evidence. This lack of thoroughness, the unreliability of evidence and the agency's reluctance to provide information about the investigation to the Petitioner prior to and during the hearing casts doubt on the overall reliability of the investigation. Based on the totality of the evidence, I conclude that the agency has not met its burden of demonstrating that Petitioner and HG lived together during the period of May, 2011 – December, 2012 and that Petitioner was overissued FS benefits during that period.

CONCLUSIONS OF LAW

The agency did not meet its burden of establishing that Petitioner and HG resided together during the period of May, 2011 – December 2012. The agency may not seek to recover an overpayment of FS benefits in the amount of \$6,163 from the Petitioner for this period.

THEREFORE, it is

ORDERED

That the agency take all administrative steps necessary to rescind the FS overpayment actions (Claim Nos. [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]) in the amount of \$6,163 against the Petitioner for the period of May, 2011 – December, 2012. This action shall be taken as soon as practicable but no later than 10 days from the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

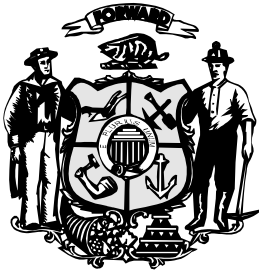
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of October, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 7, 2013.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability